IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTININTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J. CHELAMESWAR

AND

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 13760 of 2004

Between:

V. Poornachandra Rao, S/o Subba Rao,

Aged about 44 years, working as Town

Planning Building Overseer (under suspension)

Baptla Municipality, Baptla, Dist:: Guntur

..... PETITIONER

AND

1. The State of AP rep. by its Principal

Secretary, Municipal administration &

Urban Development (E2) Department,

Secretariat, Hyderabad.

2. The Municipal Commissioner,

Bapatla Municipality, Bapatla,

Dist : Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Mandamus by declaring the action of the Hon'ble A.P. Administrative Tribunal in rejecting interim orders by its orders dated: 09-07-2004 in O.A. No. 3691/2004 will cause irreparable injury to the petitioner by further suspending the G.O.Rt.No. 473 M.A. (E.2) dated 07-05-2004 of the 1st respondent herein pending the O.A. No. 3691/2004 on the file of the A.P. Administrative Tribunal, Hyderabad.

For the Petitioner: Mr. P. Suresh Reddy, Advocate

For the Respondent No1 : Government Pleader for Municipal Administration

For the Respondent No.2: Mr. D.Srinivas, Standing Counsel

The Court at the stage of admission made the following :

::ORDER::

(Per Hon'ble Sri Justice G. Raghuram)

Aggrieved by the order of the A.P. Administrative Tribunal dated 9.7.2004 declining to grant interim orders in OA No.3691 of 2004, the application, Town Planning and Building Overseer of Bapatla Municipality, under suspension pending enquiry, has filed this writ petition.

Having initially entered service as a NMR in 1987 in Markapur Municipality, the petitioner's services were regularised in 1997 and he was promoted as Tracer. He was subsequently promoted as Town Planning and Building Overseer on 4.6.2001 and posted to Bapatla Municipality.

On 9.8.2003 a charge memo was issued to him alleging (a) that he had recommended for approval a building plan in violation of the rules framed by the Government in G.O. Ms. No.422 M.A.

Department, dated 31.7.1998, constituting negligence and (b) that he had recommended for approval six building plans without collecting the requisite fees under the Heads Building Licence Fees, Development Charges and Material Encroachment Fees. The petitioner submitted his explanation and after a due process of enquiry by the order dated 27.4.2004 the punishment of withholding of one periodical increment "without retrospective effect" was issued by the 2nd respondent.

By another proceedings in G.O. Rt. No. 473 MA&UD (E2) Department, dated 7.5.2004, the 1st respondent – the State Government in the Municipal Administration and Urban Development Department, in purported exercise of powers u/Rule 8(1) of the A.P. Civil Services (Classification, Control and Appeal) Rules 1991 [for short '1991 Rules'] placed the petitioner under suspension and ordered that he should continue to be under suspension until conclusion of the disciplinary proceedings. This order was issued under the stated ground that disciplinary proceedings against the petitioner are contemplated.

Assailing the order of the 1st respondent dated 7.5.2004 placing him under suspension, the petitioner approached the A.P. Administrative Tribunal (the Tribunal) in O.A. No. 3691 of 2004. The proceedings dated 7.5.2004 was challenged *inter alia*, on the ground that he is governed by the A.P. Municipal Town Planning Subordinate Service Rules; u/Rule 18 thereof it is the 2nd respondent who is competent to place him under suspension in consultation with the Director of Town Planning or it is the Director of Town Planning who is also empowered to place him under suspension pending enquiry, but in any event the 1st respondent is not authorised. He also alleged that Rule 8(1) of the 1991 Rules is not applicable to the petitioner. Pending disposal of the OA the petitioner sought suspension of the 1st respondent's order dated 7.5.2004.

By the order dated 9.7.2004 the Tribunal rejected the petitioner's

application for interim relief, for the following reasons:

"Having regard to the facts and circumstances obtaining in this case, the Government have invoked the powers u/Rule 12 of the A.P. Civil Services (CC&A) Rule 1991 and in view of this, it is not a fit case for interim orders."

Aggrieved thereby this writ petition is filed. Heard learned counsel for the petitioner and learned Government Pleader for Municipal Administration for the 1st respondent.

Mr. Suresh Reddy, learned counsel for the petitioner contends that the exercise of power by the State Government under the provisions of the 1991 Rules is patently incompetent as the petitioner is governed by the special rules viz., A.P. Municipal Town Planning Subordinate Service Rules issued in G.O.Ms.No. 568, Housing, Municipal Administration and Urban Development (MA) Department, dated 23.5.1981 (for short 'Municipal Town Planning Rules'). These Rules have been issued by the State Government in exercise of the powers conferred by Sec. 80(2) of the A.P. Municipalities Act 1965 and as per Rule 2 thereof are deemed to have come into force on and from 30.10.1975 in respect of Categories 1 to 3 and from 3.7.1975 in respect of Categories 4 to 6 of the services constituted u/Rule 3 of these Rules. Rule-3 of these Rules sets out the constitution of the services governed thereby. The post of Town Planning and Building Overseer is enumerated as Category-4 in the constitution of service. Rule-5 enacts that the appointing authority shall be the Director of Town Planning. Rule 18 deals with discipline and to the extent necessary and relevant for the purposes of this *lis* the rule reads as under:

" Rule 18. Discipline :- (a) The Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules 1963, applicable to Government Servants shall be applicable to the members of this service except to the extent indicated hereunder. *(emphasis added)*

(b) The executive authority in consultation with the Director of Town Planning may suspend a member of this service in [Categories 1 to 4], pending enquiry into grave charges or impose the following penalties : [G.O.Ms.No. 466, MA & UD, Dt 26-9-91]

(i) Censure;

(ii) Withholding of increments;

(iii) Recovery from pay of the whole or any part of the pecuniary loss caused to the Municipal Council, by negligence or breach of orders, while working in the Municipality;

Provided that the Director of Town Planning who is the appointing authority in respect of the Categories of posts 1 to 5 of this service shall also be the authority who may suspend a member of the service pending enquiry into grave charges or impose the above said penalties. ”

The 1991 Rules have been issued by the Governor of the State in exercise of powers available under the proviso to Art. 309 of the Constitution and in supersession of the AP Civil Services (Classification, Control and Appeal) Rules 1963. Rule-3 of the 1991 Rules enacts – *“These rules apply to every Government servant except [vide Rule-3(c)] to persons for whom special provision is made in respect of matters covered by these Rules, by or under any law for the time being in force … ”* Rule-8 of the 1991 Rules enables a member of the service (who is governed by the provisions of the 1991 Rules) to be placed under suspension from service, in the circumstances set out therein.

The Municipal Town Planning Rules have been issued by the Government in exercise of the rule making power available u/Sec. 80(2) of the AP Municipalities Act 1965, to govern such conditions of service of the officers and servants of the Town Planning establishments of the Municipal Councils. As is apparent from Rule-18 of these Rules, it is the AP Civil Services (CC&A) Rules 1963, applicable to Government servants which are applicable to the members of the service governed by the Municipal Town Planning Rules, however subject to the exceptions indicated in Rule 18 of these Rules. In any event the 1991 Rules which have no doubt, repealed the 1963 Rules, are inapplicable.

Faced with the piquant situation of the order of the 1st respondent dated 7.5.2004 having quoted the provisions of the 1991 Rules which are, in any event, inapplicable to the petitioner in view of the language in Rule-18 of the Municipal Town Planning Rules, the

learned Government Pleader contended that quoting of a wrong provision would not be fatal when power exists or is traceable to some other extant provision. He contended that u/Rule 13A of the 1963 Rules the Government is empowered to place under suspension any member of the service to whom the 1963 Rules apply. Rule 13A of the 1963 Rules reads as under:

> *" 13. A. Notwithstanding anything in these rules, the appointing authority or any higher authority including Government may also place under suspension under rule 13, any member of a service to whom these rules apply".*

Rule 13 enacts that a member of the service may be placed under suspension from service pending investigation or enquiry into grave charges, where such suspension is necessary in the public interest. Rule-2 of the 1963 Rules enacts that these Rules apply to every member of a civil service of the State namely the State Service and the Subordinate Service and to the holders, other than those employed only occasionally or subject to discharge at less than one month's notice, of all civil posts, whether temporary or permanent, appointed thereto before, on or after the date specified in Rule-1 except to the extent expressly provided - (i) by or under any law for the time being in force … Rule-5 of the 1963 Rules classifies civil services of the State into State Services and Subordinate Services. Rules 6 and 7 of the 1963 Rules enact that the State Services and the Subordinate Services shall consist of the services including in Schedules I and II to these Rules, respectively. Municipal Town Planning Subordinate Services for which Rules have been issued in G.O. Ms No. 568 dated 23.5.1981 in exercise of the power u/Sec.80(2) of the A.P. Municipalities Act, is not enumerated either in the State Services or the Subordinate Services set out in Schedules I and II of the 1963 Rules. In any event in view of the specific provisions in Rule 2(1) of the 1963 Rules the operation of the 1963 Rules is excluded to the extent expressly provided by or under any law for the time being in force. Rule 18 of the Municipal Town Planning Rules constitutes such an express provision under an Act, the Andhra Pradesh. Municipalities Act, 1965. According to Rule 18(b) of these rules, it is the executive authority of the Municipality, in

consultation with the Director of Town Planning, who is empowered to suspend a member of the service governed by those Rules, pending enquiry into the grave charges. The proviso to Rule 18(b) of the Municipal Town Planning Rules also enables the Director of Town Planning who is the appointing authority, to suspend a member of this service pending enquiry into grave charges. In any event the State Government is not so empowered. The specific empowerment of the executive authority of the Municipality or the Director of Town Planning *qua* Rule 18 of the Municipal Town Planning Rules, excludes the power of the State Government to place a member of the AP Municipal Town Planning Subordinate Service, under suspension pending enquiry. Rule 8(1) of the 1991 Rules or Rule 13 and 13A of the 1963 Rules do not, in any event, empower the State Government to exercise the power of placing a member of the AP Municipal Town Planning Subordinate Service under suspension pending enquiry, in view of the provisions of Rule 18.

On the above analysis the order of the State Government in G.O. Rt. No. 473, MA & UD (E2) Department, dated 7.5.2004 is patently incompetent, *void ab initio* and unenforceable.

Therefore, the order of the A.P. Administrative Tribunal dated 9.7.2004 declining grant of interim order, is unsustainable and is accordingly set aside. The writ petition is allowed and the order of the 1st respondent–State Government, dated 7.5.2004 is suspended. There shall be no order as to costs.

Date: ----------

Pvsn J.Chelameswar, J

G. Raghuram, J

… Registrar

// TRUE COPY//

SECTION OFFICER

To

1. The Principal Secretary,

Municipal administration &

Urban Development (E2) Department,

Secretariat, Hyderabad.

2. The Municipal Commissioner,

Bapatla Municipality, Bapatla,

Dist : Guntur.

3. The Registrar, A.P. Administrative Tribunal,

Hyderabad.

4. Two copies to the Government Pleader for

Municipal Administration, High Court Buildings,

Hyderabad. (OUT)

5. 2CD copies